

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)	
and)	01cv00072-BB
ZUNI INDIAN TRIBE)	
Plaintiffs,)	ZUNI RIVER BASIN
)	ADJUDICATION
-v-)	
)	
STATE OF NEW MEXICO, <i>ex rel.</i> State)	Subproceeding 2
ENGINEER, <i>et al.</i>)	Navajo Indian Claims
Defendants)	
_____)	

**PRELIMINARY PROCEDURAL AND SCHEDULING ORDER FOR
SUBPROCEEDING 2: THE ADJUDICATION
OF NAVAJO INDIAN WATER RIGHTS CLAIMS**

The Special Master enters this Order pursuant to Fed. R. Civ. P. 16(b), and hereby amends and supercedes in part the April 5, 2004, *Procedural and Scheduling Order for Federal and Indian Water Rights Claims* (Doc. No. 323) ("April 5, 2004 Order") with respect to the adjudication of all water rights claims for surface and groundwater use made in this civil action on behalf of the Navajo Nation and its members. This matter came before the Special Master upon the United States' March 31, 2008, *Motion To Amend Procedural And Scheduling Order For Indian Water Rights Claims* (Doc. No. 1681). Having considered the comments and suggestions of all interested counsel and *pro se* parties, and being fully advised in the premises, it is hereby ordered that the following will govern the course of Subproceeding 2:

1. **Subproceeding Complaint.** On or before April 2, 2010, the United States shall file in Case No. 01cv00072 a Subproceeding Complaint setting forth a detailed statement of all claims of rights to use water in the Zuni River stream system that the United States asserts on behalf of the Navajo Nation or its members, including allottees.

2. **Establishment of Member Case.** Following the filing of the United States' Subproceeding Complaint, the Clerk will establish a member case civil action number for Subproceeding 2 and cross-file the United States' Subproceeding Complaint as the initial document in the member case. All subsequent pleadings concerning Subproceeding 2 shall be filed in the member case.

3. ***Inter se* Proceedings/Binding Effect.** Subproceeding 2 will be conducted as an expedited *inter se* proceeding: All water rights claimants in the Zuni River stream system will receive notice and have the opportunity to object to claims filed in Subproceeding 2, and to participate in the presentation to the Court of evidence and legal arguments concerning such claims. The adjudication of the Navajo Indian claims will proceed to a partial final decree which shall be binding on all water rights claimants, known and unknown, in the Zuni River stream system, regardless of whether they choose to participate as parties in Subproceeding 2, and will therefore affect these other claimants' rights to challenge the Navajo Indian Claims. However, Subproceeding 2 does not involve the adjudication of the water rights of other parties, including those of subfile defendants, of the Zuni Indian Tribe and its members, or of the United States in its proprietary capacity or in its capacity as trustee for the benefit of the Zuni Indian Tribe or Zuni Indian Tribe members.

4. **Supplemental Subproceeding Complaint.** Not later than June 1, 2010, the Navajo Nation shall file in Subproceeding 2 a pleading styled a "Supplemental Subproceeding Complaint" containing any objections the Nation may have to the United States' Subproceeding Complaint and any additional claims the Nation may have to appropriative or reserved rights to surface water or groundwater within the Zuni River stream system.

5. **Responsive Pleadings and Discovery Stayed.** No party shall serve or file an answer or other pleading responding to the United States' Subproceeding Complaint or to the Navajo Nation's Supplemental Subproceeding Complaint, or serve discovery concerning the Navajo Indian Claims, until after the scheduling and planning conference set by Paragraph 9 of this Order.

6. **Service of Notice of Expedited *Inter Se* Proceeding and Form Notice of Intent to Participate.** On or before **September 2, 2010**, the United States shall serve a *Notice of Expedited Inter Se Subproceeding*, substantially in the form attached hereto, including the form *Notice of Intent to Participate in Subproceeding 2*, on all water rights claimants in the Zuni River stream system. Service on known claimants shall be by mail addressed to the claimants or to their counsel of record. Service on unknown claimants shall be by publication of the *Notice of Expedited Inter Se Proceeding* and form *Notice of Intent to Participate in Subproceeding 2* for four consecutive weeks in a newspaper of regional circulation, the last date of publication to be on or before September 2, 2010.

7. **Notice of Intent to Participate.**

a. Unrepresented, or *pro se*, parties. Any party desiring to participate in the adjudication of the Navajo Indian Claims in Subproceeding 2 shall file a form *Notice of Intent to Participate in Subproceeding 2* with the Court for receipt on or before **October 4, 2010**. **Only parties who claim water rights within the Zuni river stream system in New Mexico will be permitted to participate in Subproceeding 2.** Filing a *Notice of Intent to Participate in Subproceeding 2* constitutes a voluntary appearance by the party, and affirmative submission to the jurisdiction of this Court with respect to all matters in the lead case, No. 01cv00072-BB, as well as those involved in the member case established for Subproceeding 2. Any party that fails to file a timely *Notice of Intent to Participate in Subproceeding 2* may not later object to any of the claims raised in

Subproceeding 2, unless pursuant to an order of the Court granting a motion to intervene in Subproceeding 2 consistent with Fed. R. Civ. P. 24.

b. Parties represented by counsel. Parties represented by counsel shall complete and sign, but not file, a *Notice of Intent to Participate in Subproceeding 2*. That pleading shall be filed by Counsel pursuant to the provisions in Paragraph 8, below.

8. **Entries of Appearance.** On or before **October 4, 2010**, each attorney representing one or more parties in Subproceeding 2, other than the United States, the Navajo Nation, or the State shall, pursuant to D.N.M.LR-Civ.83.4 and the CM/ECF Administrative Procedures Manual, file an entry of appearance in Subproceeding 2, provide the name and mailing address of each client represented, and attach to the entry of appearance the corresponding *Notice of Intent to Participate in Subproceeding 2* for each client. The Notice(s) shall be completed and signed by the client(s). The entry of appearance shall be filed regardless of whether counsel has entered an appearance in the lead case, and will relate specifically to Subproceeding 2.

9. **Planning and Scheduling Conference.** The Special Master will hold a planning and scheduling conference on **Thursday, November 4, 2010**, at a time and place to be announced. **Attendance at the planning and scheduling conference is mandatory: Any party not appearing at the planning and scheduling conference in person or by counsel will thereafter be precluded from participating in Subproceeding 2, notwithstanding the filing of a timely *Notice of Intent to Participate in Subproceeding 2*.**

10. **Answers.** Pleadings responding to the United States' Subproceeding Complaint and to the Navajo Nation's Supplemental Subproceeding Complaint are necessary to frame issues for purposes of disclosures and discovery, and to provide information essential to the Court's further management of the case, including which parties are prepared to bear the burdens of participation

in the adjudication of which issues. Accordingly, on or before February 1, 2011, all parties opposing any of the claims stated by the United States or the Navajo Nation shall file Answers consistent with Fed.R.Civ.P. 8, except that, given the proceeding's character as a subproceeding, no such Answer shall contain a counterclaim or cross-claim. Any claim that could be stated in a counterclaim or cross-claim should be properly stated in the main case, No. 01cv00072. Counterclaims or cross-claims asserted in Subproceeding 2 in violation of this Order shall be deemed stricken without further order of the Court. A party's failure to file a timely Answer shall be grounds for dismissal of the party from Subproceeding 2.

11. **Further Schedule.** For planning purposes, and subject to reconsideration at the November 4, 2010 planning and scheduling conference, the following shall govern the subsequent course of Subproceeding 2:

11.1. **Sequence of Claims.** As a matter of case management, and for purposes of enabling the parties to coordinate the resource demands of Subproceeding 2 with parallel activity in Subproceeding 1, the Special Master determines that discovery and trial activity in Subproceeding 2 should begin with that necessary to resolve any claims asserted by the United States or the Navajo Nation for uses of water for domestic, commercial, municipal, or industrial ("DCMI") purposes.

11.2. **DCMI Discovery Completion Date.** All discovery concerning DCMI claims in Subproceeding 2 shall be commenced in time to be completed by February 26, 2013. Motions relating to discovery (including, but not limited to, motions to compel and motions for protective order) shall be filed with the Court and served on opposing parties by April 26, 2013. This deadline shall not be construed to extend the twenty-day time limit in D.N.M.LR-Civ. 26.6.

11.3. **Expert Witness Disclosure.** With respect to DCMI claims, the parties anticipate calling expert witnesses in the fields of hydrology, hydrographic survey, demography, economics and other fields involving knowledge of domestic, commercial, municipal and industrial uses of water. Reports under Rule 26(a)(2) from experts retained to testify concerning the DCMI claims shall be due:

From the United States by July 6, 2011;

From the Navajo Nation by November 2, 2011;

From the State by July 6, 2012;

From all other parties by October 5, 2012.

11.4. **Pre-trial Motions.** Pretrial motions, other than discovery motions, shall be filed with the Court and served on opposing parties by April 30, 2013, or thirty (30) days after relevant documents are provided pursuant to a motion to compel, whichever is later. Any pretrial motions, other than discovery motions, filed after this date shall be considered untimely in the discretion of the Court.

11.5. **Witness and Exhibit Lists.** Final lists of witnesses and exhibits under Rule 26(a)(3) shall be due from all parties on June 4, 2013. Parties shall have 15 days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

11.6. **Date of Trial.** The case should be ready for trial of all matters concerning DCMI claims by July 8, 2013.

11.7. **Other Claims.** The schedule of proceedings to adjudicate any claims asserted in Subproceeding 2 by the United States or the Navajo Nation for uses of water other than DCMI uses shall be established at a scheduling conference to be set following the conclusion of the trial of DCMI claims.

IT IS SO ORDERED.

Vickie L. Gabin

SPECIAL MASTER VICKIE L. GABIN